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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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May 10, 2011

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

I applaud the Federal Trade Commission's (FTC) decision to hold a forum on unauthorized third-party charges on telephone bills. As you know, the practice of placing unauthorized third-party charges on telephone bills, commonly referred to as "cramming," is a problem dating back to the 1990s. For far too long, cramming has cost consumers and businesses both time and money, as they have faced a seemingly endless string of bogus third-party charges on their landline telephone bills. It is time we put an end to this harmful practice.

To that end, last year, I opened an investigation into cramming on landline telephone bills to determine the scope of the problem today and the effectiveness of the telephone companies' actions to address it. I became interested in this issue because state attorneys general and the FTC have repeatedly brought enforcement actions in recent years against companies for placing unauthorized charges on landline telephone bills. These cases produced striking evidence of fraud and showed that consumers' and businesses' telephone bills still include millions of dollars in bogus third-party charges, despite the telephone companies' efforts to combat the problem.

The enforcement actions brought by the FTC and state attorneys general have provided us with important information about the cramming problem, but they alone do not present the full story. The Committee is now using its investigatory tools to answer a fundamental question about cramming that cannot be addressed through enforcement actions. We have been examining whether the examples of fraud found in these enforcement actions are rare occurrences, or whether they are signs of a pervasive problem with the telephone companies' third-party billing systems.

While the investigation is ongoing, Committee staff has already compiled enough evidence to convince me that third-party billing on landline telephone bills deserves careful scrutiny. The telephone companies' third-party billing systems appear to be too susceptible to fraud through cramming. It appears to be a pervasive problem because the telephone companies have been too willing to place third-party charges on their customers' bills, without first determining whether the charges have been authorized by their customers.

In the coming months, I intend to hold a hearing on cramming and third-party billing to present the findings of the Committee staff's investigation and to discuss the steps needed to end the cramming problem. For now, to assist the FTC as it considers cramming during its upcoming forum, I am sharing what the Committee has learned about the emergence of the cramming problem in the 1990s and the actions that have been taken to address it. As we examine the cramming problem today, it is important to understand why this problem developed in the first place, and to understand why the actions already taken to address cramming have not solved the problem. To put an end to cramming, we must ensure that the same mistakes are not made again.

Emergence of the Cramming Problem

In the 1990s, the telephone companies opened their billing platforms to an array of third-party companies offering a variety of products and services. For the first time, telephone numbers worked much like credit card numbers. Consumers could purchase products or services with their telephone numbers and the charges for the products or services would later appear on their telephone bills. While this development benefitted consumers because it offered the convenience of combining separate charges into one bill, it also created new problems. Cramming emerged as an unintended consequence of the telephone companies' third-party billing systems. Shortly after the telephone companies opened their billing platforms, state and federal authorities, including the FTC, saw a major spike in consumer complaints about unauthorized third-party charges on telephone bills.

At the time, experts linked this outbreak of fraud to the telephone companies' inexperience in managing third-party billing systems and the ease with which a con artist could obtain consumers' and businesses' telephone numbers. They noted that the telephone companies' decision to make their customers' telephone numbers akin to credit card numbers created the ideal conditions for fraudulent conduct. Unlike credit card numbers, telephone numbers were widely available to anyone with a telephone directory. If so inclined, a con artist needed only a few minutes to obtain thousands of consumers' and businesses' telephone numbers. In 1999, when analyzing cramming, the Government Accountability Office found as much, explaining that "[s]ome vendors apparently have simply lifted names and numbers from telephone directories to charge businesses for nonexistent services."¹

Con artists also took advantage of consumers' lack of awareness over the changing nature of their telephone numbers. For more than fifty years, landline telephone numbers were nothing more than what their name implied—a set of numbers assigned to a telephone line for a specific location. To this day, the Merriam-Webster Dictionary defines telephone numbers in this manner, without mentioning that they can also be used to make purchases. Yet in the 1990s, in the span of just a few years, decades of practice were overturned, as telephone numbers evolved

¹ Government Accountability Office, *Overview of the Cramming Problem* (GAO/T-RCED-00-28) (Oct. 25, 1999).

into a set of numbers that consumers or businesses could use, like credit card numbers, to make purchases.

Not surprisingly, consumers did not fully grasp this change. Before third-party charges could be placed on telephone bills, unwanted telephone calls were the only negative consequences consumers experienced from sharing their telephone numbers with individuals and companies. After the change, consumers who shared their telephone numbers in precisely the same manner could also be authorizing third-party charges on their telephone bills. Unscrupulous companies and con artists quickly uncovered a number of methods to take advantage of this confusion. For example, crammers routinely used sweepstakes entry forms with obscure fine print about charges on telephone bills, which they relied on as evidence of authorization. Consumers would share their telephone numbers on these sweepstake entry forms thinking they were only entering contests, when, in fact, they were enabling companies to claim that they had authorized charges to be placed on their telephone bills.

Given that the telephone companies' third-party billing systems created the ideal conditions for fraud, the telephone companies needed to be extra vigilant to make sure that the charges they placed on their customers' bills were authorized. However, when third-party companies submitted charges for placement on consumers' telephone bills, the telephone companies did very little to make sure they were authorized. Crammers could submit unauthorized charges knowing that the telephone companies would put them through with few questions asked.

At the time, the FTC explained that, "con artists have found the telephone billing and collection system to be a fertile area to defraud consumers" because it has "yet to develop the kind of effective mechanism for risk assessment and fraud prevention that characterize other billing and collection systems."² The rampant levels of fraud and the ease in which it was accomplished led the Federal Communications Commission (FCC) to rank cramming "as one of the most serious consumer problems in the industry."³

Efforts to Combat the Cramming Problem

The rise of unauthorized third-party charges in the 1990s was so significant that federal authorities, consumer advocates, and the telephone companies all agreed that changes to the telephone companies' third-party billing systems were needed. The ensuing debate between stakeholders and the telephone companies was not over whether the third-party billing systems should be reformed, but how those reforms should be accomplished. At the time, both the FCC and the telephone companies advocated correcting the problem through voluntary means, rather than through FCC rulemaking or congressional action.

² Permanent Subcommittee on Investigations for the Senate Committee on Governmental Affairs, *Hearing on "Cramming: An Emerging Telephone Billing Fraud*, 105th Cong. (Jul. 23, 1998).

³ *Id.*

During a congressional hearing on cramming in 1998, the FCC explained that voluntary guidelines would “have a major impact on reducing cramming” and that “consumers needed a rapid response from the Commission in order to stop the spread of cramming...and traditional regulatory tools...would have taken months to complete.” At the same hearing, the President of the U.S. Telephone Association added that the industry “needed flexibility to deal with cramming on a case specific basis” and that “mandatory guidelines or a one-size-fits-all approach would erode that ability.”

In April 1998, the FCC invited the largest telephone companies, along with representatives of the relevant telecommunications industry associations, to participate in a workshop to develop a set of voluntary guidelines to combat cramming. By July 1998, the telephone companies and the industry had put forward a set of nonbinding guidelines to combat the cramming problem. During subsequent congressional hearings about cramming, the telephone industry used the new voluntary guidelines to argue that congressional action on cramming and third-party billing was not needed. This advocacy worked. A number of bills were introduced in Congress that addressed cramming by placing requirements on the telephone companies, but none were adopted.

This voluntary response to the cramming problem marked a different approach than the one Congress took when it faced similar problems with the credit card payment system in the 1960s and 1970s. At the time, the credit card system was plagued by problems similar to cramming and consumers had very little recourse when unauthorized charges appeared on their credit card bills. These billing abuses and unauthorized charges were causing consumers to lose confidence in the system.

In response, in 1974, Congress passed the Fair Credit Billing Act to protect consumers from the fraudulent conduct that credit cards were enabling. The law limited consumers’ liability for unauthorized charges, imposed responsibilities on the credit card companies to ensure that the charges placed on consumers’ bills were authorized, and gave consumers the right to dispute charges on their credit card bills. In the years since, consumer confidence in the credit card system has grown tremendously, as credit cards have become a reliable method of payment in the United States. On a yearly basis, billions of transactions are made using credit cards.

Because federal authorities supported a voluntary approach to the cramming problem, telephone consumers do not have the legal protections that credit card consumers enjoy through the Fair Credit Billing Act. Consumers who dispute charges on their credit card bill have more options and more rights than consumers who dispute charges on their telephone bill.

The only mandatory protections that have been provided to consumers are related to disclosure requirements. In 1999, the FCC adopted “Truth-in-Billing” regulations, which required telephone bills to contain “full and non-misleading descriptions” of third-party products and services and a clear indication of the third-party company responsible for each charge. While these requirements have made it easier for consumers and businesses to identify

unauthorized charges on their bills, some consumers and businesses continue to go months, if not years, before recognizing unauthorized third-party charges on their telephone bills. I understand the difficulties consumers and businesses face when reviewing their telephone bills. In prior years, I have introduced and supported legislation directed at making telephone bills more transparent and less confusing for telephone customers.

The Cramming Problem Continues

Although the major telephone companies agreed to incorporate many of the voluntary guidelines into their third-party billing systems, cramming continues to be a significant problem for landline telephone users. In 2009, the FCC received well over 6,000 calls about cramming and, in the first half of 2010, the FTC received more than 4,000 complaints. Multiple enforcement actions brought in recent years also show that cramming continues. For example, in 2006, the Illinois Attorney General brought a case against a company for placing charges on thousands of Illinois consumers' telephone bills for "identity protection services they didn't sign up for." In 2010, the Minnesota Attorney General brought a cramming case against a similar company and alleged that "less than one-half of one percent" of the thousands of Minnesotans charged for a company's long distance service ever actually used the service. As you know, the FTC has also repeatedly brought cases against companies for unauthorized third-party charges on telephone bills. More than a decade after the industry adopted its voluntary guidelines, federal and state authorities continue to find egregious examples of cramming.

Given that the problem continues, the decision to allow the telephone companies to address it through voluntary guidelines must be reexamined. Even as the telephone companies were beginning to implement their voluntary guidelines in the 1990s, federal authorities and elected officials were already questioning whether this approach would be adequate. At the time, they looked back to the Fair Credit Billing Act and noted that it took mandatory requirements to decrease the fraudulent conduct that had been plaguing the credit card system.

During a hearing on cramming in 1998, Senator Durbin, among others, foresaw the inadequacies of the voluntary approach. He argued that the voluntary guidelines were "far short of what happened in the credit card industry, where we established a legal standard across the Nation, so that everyone knew what the rules were," and he feared that "we may find ourselves, months from now or years from now, saying this just did not do it."⁴ More than a decade later, Senator Durbin's concerns appear especially prescient. The cramming problem is still with us.

This time around, Congress must get it right. We cannot allow another decade to pass as consumers, businesses, nonprofit organizations, and government agencies continue to get scammed through their landline telephone bills. As Chairman of the Senate Commerce Committee, I will make sure that the Committee continues to work on this problem until we put an end to it once and for all. In the coming months, I will release the results of the Committee

⁴ Permanent Subcommittee on Investigations for the Senate Committee on Governmental Affairs, *Hearing on "Cramming: An Emerging Telephone Billing Fraud*, 105th Cong. (Jul. 23, 1998).

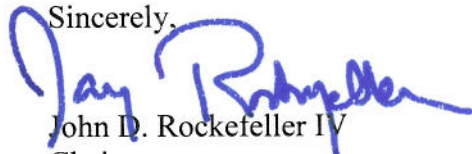
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staff's investigation into cramming and landline third-party billing. This information will help us put an end to the problem.

Understanding and solving the cramming problem on landline telephone bills has gained additional significance in recent years, as telephone companies have also increasingly offered wireless phone bills as a method of payment for consumers. Recent lawsuits and press accounts have shown that wireless consumers are already experiencing some of the same problems with cramming that have plagued landline consumers for years. As the wireless method of payment continues to develop, it is important that we understand what went wrong with the third-party billing system on landline telephones, so that the same mistakes are not made on the wireless side. Although there are many differences between the third-party billing systems on landline and wireless telephones, some of the lessons learned from cramming on landline telephone bills will likely be applicable to the payment methods still developing on wireless phones.

I look forward to continue working with you and the FTC as we tackle the cramming problem.

Sincerely,



John D. Rockefeller IV
Chairman

cc: Kay Bailey Hutchison
Ranking Member